

REMARKS/ARGUMENTS

Status of Claims

Claims 1 to 4, 6 to 8, 12 to 14, 16 and 19 to 24 are pending in the application.

35 U.S.C. § 103 Claim Rejections

In rejecting claims under 35 U.S.C. § 103(a), the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). It is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d, 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. Additionally, in making a rejection under 35 U.S.C. § 103(a) on the basis of obviousness, the Examiner must provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

Applicant's analysis below demonstrates that the Examiner has failed to fulfil the initial burden for a finding of obviousness under 35 U.S.C. 103.

Claims 1 to 3, 6 to 8, 12 to 14, 16 and 19 to 24

The Examiner has rejected claims 1 to 3, 6 to 8, 12 to 14, 16 and 19 to 24 under 35 U.S.C. 103(a) as being unpatentable having regard to Noel et al. (Noel), U.S. Publication No. 2005/0032539 in view of Silvestri, U.S. Patent No. 6,721,573.

Noel and Silvestri fail to teach “the second user device performing extended functionality in response to a value of the qualifier flag”

The Examiner has alleged in the current Office Action that some of the limitations of claim 1 are disclosed by Noel, but concedes that Noel fails to disclose the following limitations;

“the TCRM including an identification of the first user device”;

“the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device”; and

“the second user device performing extended functionality in response to a value of the qualifier flag,

wherein the extended functionality comprises at least one functionality selected from the group consisting of:

- a) registering a continuing transmit channel request at the THD device;
- b) canceling a transmit channel request at the THD device; and
- c) performing automatic release of the transmit channel by the THD device”

The Examiner alleges that Silvestri discloses these limitations. The Examiner alleges that the first limitation is disclosed in column 5, line 65 to column 6 line 6 and column 6, lines 6 to 18. The Examiner alleges that the second limitation is disclosed in column 6, lines 35 to 55. The Examiner alleges that the third limitation is disclosed in column 6, lines 35 to 63 and column 7 lines 53 to 67.

Applicant submits that the Examiner has too broadly equated the MAC CON REQ message disclosed in Silvestri to the specific implementation of using a flag qualifier to indicate a number of possible actions initiated by a first user device, such as 1) a channel request, 2) a continuing channel request, 3) cancelling a channel request or 4) performing an automatic release of a transmit channel. Silvestri discloses that the content of the MAC CON REQ includes:

the PP identifier of originating PP 101, a dispatch group identifier, and an FP identifier associated with the FP providing communication services to PP 101 (i.e., FP 105). Alternatively, instead of a dispatch group identifier, the MAC CON REQ message may include the PP identifiers of the other members of the dispatch group. Preferably, the MAC CON REQ message further identifies a traffic bearer selected by the MAC layer of the PP 101 for the dispatch call (column 6, lines 29-37).

Furthermore in column 6, lines 41 to 45 Silvestri discloses that the MAC layer of PP 101 selects a traffic bearer based on a radio channel map. The radio channel map includes a signal quality metric, such as a signal strength or a carrier-to-interference ratio. The Examiner equates the qualifier flag to a “traffic bearer selected including radio channel map with time slots; see Col. 6, lines 33-55” page 4 of the present Office Action. Applicant submits that the traffic bearer and radio channel map are not equivalent to a flag identifier as these features disclosed in Silvestri do not provide extended functionality as described below.

Claim 1 further specifically recites “the second user device performing extended functionality in response to a value of the qualifier flag, wherein the extended functionality comprises at least one functionality selected from a group consisting of” (emphasis added) and three specific functionalities, none of which are simply “the FP 105 reserves the traffic bearer identified and authorizes the PP 101 to transmit on the reserved traffic bearer” as the Examiner appears to be equating to the concept of performing extended functionality (see Office Action page 4).

Applicant directs the Examiner’s attention to page 16, starting at line 28, wherein the present specification specifically recites:

“In some embodiments, Flag value 1 is a default value for a non-extended functionality of the TCRM. In such a case the THD device treats the TCRM the same way it would treat a TCRM with no qualifier flag 53. In other embodiments Flag value 2 is a value to indicate that until the THD device receives a subsequent terminating or cancelling request from the RHD device, the current transmit

channel request of the TCRM containing the qualifier flag 53 stands" (emphasis added).

Further detail regarding Flag values 3 and 4 are also provided. As Flag value 1 is indicated to be a non-extended functionality, the description of Flag values 2, 3 and 4 are extended functionality. Clearly, the extended functionalities performed by the second user device, in response to the qualifier flag are more than simply "the FP 105 reserves the traffic bearer identified and authorizes the PP 101 to transmit on the reserved traffic bearer" as alleged by the Examiner.

A first extended functionality includes "registering a continuing transmit channel request at the THD device". Applicant submits that Silvestri makes no suggestion or specific disclosure of registering a continuing transmit channel request at the THD device. A second extended functionality is "cancelling a transmit channel request at the THD device". Applicant submits that Silvestri makes no suggestion or specific disclosure of cancelling a transmit channel request at the THD device. A third extended functionality is "performing automatic release of the transmit channel by the THD device". Applicant submits that Silvestri makes no suggestion or specific disclosure of performing automatic release of the transmit channel by the THD device.

Noel and Silvestri fail to teach "the second user device performing ... automatic release of the transmit channel"

Claim 1 recites "the second user device performing ... automatic release of the transmit channel." The Examiner admits Noel fails to teach all of these limitations and introduces Silvestri to attempt to remedy these deficiencies. In order to properly construe the rejection, Silvestri's PP's are interpreted as meeting the claim's limitations of user devices. Applicant respectfully disagrees with the reasoning of a rejection.

The Examiner alleges Silvestri's teachings that "FP 105 reserves the traffic bearer identified and authorizes the PP 101 to transmit on the reserved traffic barrier" teaches the claims limitations of "the second user device performing ... automatic release of the transmit channel." But the claim requires that a second user device performs the automatic release. In contrast, it is Silvestri's FP, which is not a PP, that performs the authorizing. In other words,

Silvestri at best teaches that its FP performs an automatic release, but fails to teach that its PP performs an automatic release. Hence, the cited art fails to teach all the limitations of the claim.

Applicant respectfully submits that for at least the reasons discussed above, Silvestri does not disclose all the limitations of claim 1.

The Combination of Noel and Silvestri is Improper

Additionally, Silvestri's teachings are to a digital cordless telecommunication system based on a DECT protocol or a PWT protocol, where there is no prescribed method for dispatch communications in which one PP of the multiple PP's may engage in a group communication with one or more of the other PP's and circumvent the telecommunication network (Silvestri column 1 lines 39-44). In other words, Silvestri's communication between different PP's is outside of the telecommunication network that the PP's are connected to via the FP. But Noel's devices communicate with each other using the telecommunication network. Specifically, Noel's devices utilize the push to talk over cellular communication standard that relays push to talk communications between devices using a telecommunications network. As such, to incorporate the teachings of Silvestri with the teachings of Noel would disallow using a telecommunications network link between Noel's devices for push to talk communication, rendering Noel's devices unfit for their primary purpose of providing push to talk communications. Hence, the proposed combination of cited art is improper.

Improper Use of Hindsight Reasoning

Further, the only reason to attempt to combine the teachings of the cited art is in an attempt to meet the limitations of claim, which is improper hindsight reasoning. As discussed above, the proposed combination renders the base art unfit for its primary purpose. As such, there is no reason to combine the cited art leaving the only reason to combine the cited art references to be in an effort to meet the limitations of claim, which is improper.

Applicant submits that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references.

The Examiner's motivation for combining Noel and Silvestri is tied to a view that Noel and Silvestri teach the particular limitations of claim 1. As detailed above in view of the claimed subject matter of claim 1, this is an incorrect interpretation of Noel and Silvestri and as such this also affects the Examiner's reason for combining the cited references.

For at least the reasons discussed above, Applicant submits that claim 1 patentably distinguishes over the combination of Noel and Silvestri.

Applicant respectfully requests that the Examiner reconsider and withdraw the obviousness rejections of claim 1.

Claims 2, 3 and 6 to 8 are dependent upon claim 1. Claims 12, 21 and 24 are independent claims reciting an extended functionality limitation similar to claim 1. Claims 13, 14, 16, 19, 20, 22 and 23 are dependent upon claim 12, either directly or indirectly. For at least the same reasons discussed above with regard to claim 1, Applicant submits that claims 2, 3, 6 to 8, 12 to 14, 16 and 19 to 24 also patentably distinguish over the combination of Noel and Silvestri.

Claim 4

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable having regard to Noel in view of Silvestri and further in view of Stubbs, U.S. Patent No. 6,930,994.

Differences between the claimed invention and the prior art

Applicant submits that claim 4 is patentable over Noel, Silvestri and Stubbs, as the Examiner has not properly determined the differences between the claimed invention and the prior art. Furthermore, the Examiner has not provided a valid explanation to support an obviousness rejection under 35 U.S.C. 103. Applicant's reasoning is detailed below.

The Examiner points to Stubbs as teaching wherein the half-duplex session is a voice communication session compliant with at least one system selected from the group of iDEN.TM., 1XRTT CDMA, GSM/GPRS, UMTS, and TDMA. Claim 4 depends from claim 1. Even if Stubbs teaches what is alleged by the Examiner, which Applicant does not necessarily concede, Stubbs does not overcome the deficiencies of Noel and Silvestri outlined above

concerning the rejection of claim 1. Accordingly, the combination of Noel, Silvestri and Stubbs does not render claim 4 obvious.

For at least the reasons discussed above, Applicant respectfully submits that the combination of Noel, Silvestri and Stubbs does not teach all the limitations recited in claim 4. Furthermore, the Examiner has failed to explain why the missing limitations would be obvious to one skilled in the art. Without all the limitations of claim 4 being disclosed by the two references and no reason provided by the Examiner why these missing limitations would be obvious, Applicant submits that there are differences between what is recited in amended claim 4 and what is disclosed in the cited art that renders the claims non-obvious.

The Combination of Noel, Silvestri and Stubbs is Improper

Applicant submits that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references.

The Examiner's motivation for combining Noel, Silvestri and Stubbs is tied to a view that Noel and Silvestri teach the particular limitations of claim 1 and thereby the same limitations in claim 4. As detailed above in view of the claimed subject matter of claim 1, this is an incorrect interpretation of Noel and Silvestri and as such this also affects the Examiner's reason for combining the cited references.

For at least the reasons discussed above concerning the rejection of claim 1, Applicant submits that claim 4 patentably distinguishes over the combination of Noel, Silvestri and Stubbs.

Applicant respectfully requests that the Examiner reconsider and withdraw the obviousness rejections of claim 4.

In view of the foregoing, early favorable consideration of this application is earnestly solicited. In the event that the Examiner has concerns regarding the present response, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

RAO, KRISHINA ET AL.

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